

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**ALFRED COSTANZO and MELANIE
COSTANZO,**

Plaintiffs,

v.

No. _____

**PROPERTY & CASUALTY INSURANCE
COMPANY OF HARTFORD,**

Defendant.

NOTICE OF REMOVAL

Defendant Property & Casualty Insurance Company of Hartford (“Hartford”) hereby gives notice of the removal of the above-captioned matter from the Second Judicial District Court in the County of Bernalillo, State of New Mexico, to the United States District Court for the District of New Mexico, pursuant to 28 U.S.C. §§1332, 1441 and 1446. In support thereof, Hartford states the following:

I. CASE BACKGROUND AND FOUNDATION FOR REMOVAL

1. On or about November 4, 2013, Plaintiffs commenced an action in the Second Judicial District Court, State of New Mexico, against Hartford bearing cause number D-202-CV-2013-08782 (“State Court Action”). Plaintiffs’ Complaint for Damages (“Complaint”) seeks judgment against Hartford for breach of contract and unfair insurance practices.

2. A copy of the pleadings is attached as Exhibit A.

3. Plaintiff served Hartford with process in the State Court Action by mail to the Superintendent of Insurance on November 18, 2013. *See* Exhibit A.

4. This Notice of Removal is timely filed within thirty days after service of the Complaint on Hartford. See 28 U.S.C. §1446(b).

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000, and because the properly-named parties to this action are citizens of different states. These points are demonstrated more comprehensively in the following sections of this petition.

6. Venue is proper in this Court because the State Court Action is pending in New Mexico. *See* 28 U.S.C. § 1441(a).

II. THE PARTIES IN THIS ACTION ARE CITIZENS OF DIFFERENT STATES

7. Plaintiffs Alfred and Melanie Costanzo are citizens of New Mexico. Complaint ¶ 1.

8. Hartford is an insurance company organized under the laws of a state other than New Mexico. Complaint ¶ 2. Hartford is an Indiana corporation with its principal place of business in the state of Connecticut. *See* attached as Exhibit B, corporate record for the State of Indiana.

9. As between Plaintiffs and the Defendant in this action there is complete diversity of citizenship.

III. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

10. The Complaint is silent as to the specific amount of damages that Plaintiffs seek. Plaintiffs seek compensation for damage sustained to a dwelling caused by a fire including “extensive and additional and consequential damages with the result that the Property is now uninhabitable and a total loss.” Complaint ¶ 10. Plaintiffs seek “all actual and compensatory damages, punitive damages, treble damages, costs and attorneys’ fees, pre-judgment and post-judgment interest.” *Id.* ¶ 16. Plaintiffs have submitted a claim for damage in the amount of \$95,862.60. *See* Notarized Proof of Loss executed by Plaintiffs, attached as Exhibit C.

11. Hartford denies the allegations in the Complaint. Taking those allegations on their face as true, however, as this Court must do for the purpose of determining the propriety of removal, it is clear that Plaintiffs’ claims demonstrate a controversy in excess of \$75,000.

12. Given the complete diversity of the real parties and an amount in controversy in excess of \$75,000, this Court has jurisdiction over the causes of action and claims asserted in the State Court Action pursuant to 28 U.S.C. § 1332, and this action properly is removable pursuant to 28 U.S.C. § 1441.

13. Pursuant to 28 U.S.C. § 1446(d), Defendant is serving (or has served) counsel for Plaintiffs with a copy of this Notice of Removal.

14. Pursuant to 28 U.S.C. § 1446(d), Defendant is concurrently filing a copy of this Notice of Removal with the clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico.

WHEREFORE, Hartford respectfully requests that the State Court Action now pending in the Second Judicial District Court, State of New Mexico, bearing cause number D-202-CV-2013-08782 be removed to this Court, and ask that this Court make and enter such further orders as may be necessary and proper.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By "Electronically Filed" /s/Lisa C. Ortega

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*Attorney for Defendant Property & Casualty Insurance Company
of Hartford*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of December, 2013, we filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel below to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Floyd D. Wilson
Myers, Oliver & Price, P.C.
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/s/ Lisa C. Ortega
Lisa C. Ortega